



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 23 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN THE MATTER OF:

H&S Performance, LLC
4160 S. River Rd.
St. George, UT 84790

ATTENTION: Casey W. Shirts, Registered Agent

Request for Information under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (EPA) hereby requires H&S Performance, LLC (H&S or "you") to submit certain information as part of an EPA investigation to determine H&S's compliance with sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the implemented motor vehicle regulations found at 40 C.F.R. Parts 85 and 86. Appendix A contains procedures regarding confidential business information, Appendix B specifies the information that you must submit, Appendix C provides instructions for your response to this request, Appendix D provides definitions, and Appendix E provides a sample format for one portion of the response to the requests.

We issue this Request for Information under section 208(a) of the Act, 42 U.S.C. § 7542(a). Under section 208(a), EPA may require any person who is subject to the motor vehicle emission and fuel requirements of the Act to perform tests and provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder. The enclosures to this letter specify the information that you must submit, and provides instructions and definitions for responding to this request. You must send two copies of your response to this request within **10 calendar days** of the date of this letter.

Failure to provide the required information may result in the initiation of a civil action under section 205(b) of the Act, 42 U.S.C. § 7524(b). Failure to respond or provide a complete response to this request may subject you to a civil penalty of up to \$37,500 per day. H&S must submit all requested information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

We may use any information submitted in response to this request in an administrative, civil, or criminal action.


You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this request, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. However, no such CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). EPA may, without further notice, provide the public with any information not subject to a CBI claim. You must specify the page, paragraph, and sentence when identifying the information subject to your claim. Appendix A specifies the assertion and substantiation requirements for business confidentiality claims.

Please submit all requested information via overnight mail or courier service to the following address:

Kathryn P. Caballero
Air Enforcement Division
EPA Office of Civil Enforcement
William Jefferson Clinton South Building
Room 1147A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Any questions concerning this Request for Information should be directed to Ms. Caballero at (202) 564-1849 or caballero.kathryn@epa.gov.

Sincerely,


Phillip A. Brooks, Director
Air Enforcement Division

Enclosures

Appendix A

Confidential Business Information

You may assert a business confidentiality claim covering all or part of the information you provide in response to this Request for Information for any business information entitled to confidential treatment under section 208(c) of the Act, 42 U.S.C. § 7542(c), and 40 C.F.R. Part 2, Subpart B. Under section 208(c), you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, Subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in section 208(c), and 40 C.F.R. Part 2, Subpart B. EPA will construe your failure to furnish a business confidentiality claim with your response to this Request for Information as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this Request for Information. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment is set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e); (2) you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; (3) the information is not and has not been reasonably obtainable by legitimate means without your consent; and (4) the disclosure of the information is likely to cause substantial harm to your business’s competitive edge. 40 C.F.R. § 2.208 (a)-(d). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. See 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this Request for Information, in accordance with 40 C.F.R. § 2.204(e)(4), EPA requests that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential

treatment? Specify by page, paragraph, and sentence when identifying the information subject to your claim.

2. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Are there means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish answers to the above questions concurrent with your response to this Request for Information if you have claimed any information as business confidential. See 40 C.F.R. § 2.204(e)(2). Under 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely answers as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your answers to:

Kathryn P. Caballero
Air Enforcement Division
EPA Office of Civil Enforcement
William Jefferson Clinton South Building
Room 1147A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Pursuant to 40 C.F.R. § 2.205(c), you are hereby advised that information you submit as part of your answers may be regarded by EPA as entitled to confidential treatment if, when it is received by EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), you may assert a business confidentiality claim covering all or part of your response to these questions, as provided in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent of and by means of the procedures set forth in section 208(c) of the Act and 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your answers as a waiver of that claim, and the information may be made available to the public without further notice to you.

Appendix B
Request for Information

H&S must submit the following information to the United States Environmental Protection Agency under section 208 of the CAA, 42 U.S.C. § 7542, regarding the sale or offering for sale of certain parts and products. All information should be provided both electronically (compact disc, Universal Serial Bus (USB) drive, or other electronic media data storage device) and the Appendix E format.

1. All video recordings (videos) posted to Youtube.com by H&S during the period January 1, 2010, to the date of this letter regarding the Black Maxx, Mini Maxx, XRT Pro, exhaust replacement pipes, exhaust gas recirculation (EGR) removal and/or delete kits, and/or any similar device. For each video, identify the individual who posted the video and the date it was first posted. Such videos include, but are not limited to, the videos identified at the following internet locations:

www.youtube.com/watch?v=G-kBunOglS8
www.youtube.com/watch?v=skVZ3oRWQXI&feature=plcp
www.youtube.com/watch?v=zctPoTgOqjA
www.youtube.com/watch?v=GGAKXS8q5iA

2. All videos posted to Facebook.com and any internet forum by H&S during the period January 1, 2010, to the date of this letter regarding the Black Maxx, Mini Maxx, XRT Pro, exhaust replacement pipes, exhaust gas recirculation (EGR) removal and/or delete kits, and/or any similar device. For each video, identify the individual who posted the video and the date it was first posted.

Appendix C
Instructions for Responses

1. This Request for Information is a continuing request. H&S must promptly supplement its response in the event that it learns that it possesses responsive documents or information not yet produced, or gains possession, custody or control of responsive documents or information after initially responding to these requests.
2. Under section 208(a) of the Act, H&S is required to provide full and complete answers to each of the specific questions set forth in the Request for Information, and to indicate which documents or information are responsive to each specific Request for Information. If a particular question is inapplicable, H&S must state this in its response and provide a narrative explanation as to why it believes the question does not apply. If H&S does not have documents or information responsive to any specific Request for Information, H&S must so indicate in its response. H&S must also certify that the responses are true and complete using the specific language set forth in the Request for Information.
3. Provide any narrative responses to all requests, above, in English, in written document form. Submit any data or information in written form, and in electronic form, using Microsoft Excel or equivalent spreadsheet software.
4. For each answer and document produced, please provide the number of the question to which it responds and identify each person who provided information that was used to prepare that answer.
5. Where documents or information necessary for a response are not in your possession, custody, or control, indicate in your response why such documents or information are not available or in your possession, custody, or control, and identify any source that either possesses or is likely to possess such documents or information.
6. All submitted documents should be copies and not original documents.
7. Where H&S has previously submitted to EPA information requested herein, re-submit the information in the format requested. Identify the material that was previously provided, the date on which it was provided, and the person at EPA to whom it was submitted.

Appendix D

Definitions

All terms used in this Request for Information have their ordinary meaning unless otherwise defined herein, in the Act, 42 U.S.C. §§ 7401 – 7671q, or in the implemented motor vehicle regulations found at 40 C.F.R. Parts 85 and 86.

1. “Affiliate” or “affiliated” means any entity that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with the entity named in the sentence where “affiliate” or “affiliated” is used (other than entities serving solely as customs brokers).
2. “Document” or “document” means any object that records, stores, or presents information, and includes writings, memoranda, records, emails, text messages or information of any kind, formal or informal, whether wholly or partially handwritten or typed, draft or final, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. If stored in electronic form, each document must be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy also must include any attachments to or enclosures with any document.
3. “H&S,” “you,” and “your” includes H&S Performance, LLC, and any affiliates, predecessors, successors, and assigns.
4. The term “video recording” or “video” means any recording of both the visual and audio components.
5. The term “person” or “entity” means any human, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal entity, organization, or association.

Appendix E

SAMPLE FORMAT FOR RESPONSE

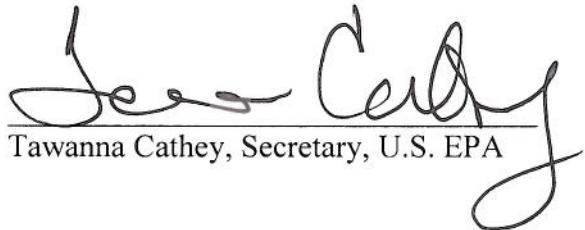
[illegible]

Certificate of Mailing

I, Tawanna Cathey, certify that I sent a Request for Information under the Clean Air Act by Certified Mail, Return Receipt Requested, to:

Mr. Casey W. Shirts
H&S Performance, LLC
4160 S. River Rd.
St. George, UT 84790

on the 23rd day of February 2015.


Tawanna Cathey, Secretary, U.S. EPA

Certified Mail Receipt Number: 7008323000094503716